

§ 578.4

29 CFR Ch. V (7–1–00 Edition)

(1) Where the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations.* (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be "willful" for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful.

(3) For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

[57 FR 49129, Oct. 29, 1992; 57 FR 57280, Dec. 3, 1992]

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

(b) Where appropriate, the Administrator may also consider other relevant factors in assessing the penalty, in-

cluding but not limited to the following:

(1) Whether the employer has made efforts in good faith to comply with the provisions of the Act and this part;

(2) The employer's explanation for the violations, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

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AUTHORITY: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; Sec. 3103, Pub. L. 101-508.

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989 and the Omnibus Budget Reconciliation Act of 1990, provides that—

(1) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section shall be subject to a civil penalty of not to exceed \$10,000 for each employee who was the subject of such a violation.

(2) Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed \$1,000 for each such violation.

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(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The amount of any penalty under this subsection, when finally determined, may be—

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary.

(5) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(6) Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

(7) Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.

(b) This part provides for the issuance of the notice of civil penalty for any violation of section 12 of the Act relating to child labor or any regulation issued under that section; describes the violations for which a penalty may be imposed and the factors to be considered by the Secretary of Labor or the Secretary's designated representative in assessing the amount of such a penalty; outlines the procedure for an exception to the determination that the violations occurred which may be filed by the person so charged; and summarizes the methods provided

for collection and recovery of the penalty.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991]

§ 579.2 Definitions.

As used in this part and part 580 of this chapter:

Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*);

Administrative law judge means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554-557.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part and part 580 of this chapter.

Agency has the meaning given it by 5 U.S.C. 551.

Chief Administrative Law Judge means the Chief Administrative Law Judge, Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001-8002.

Department means the U.S. Department of Labor.

Person includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

Secretary means the Secretary of Labor, U.S. Department of Labor, or an authorized representative of the Secretary.

Solicitor of Labor means the Solicitor, U.S. Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part and part 780 of this chapter.

[40 FR 25792, June 18, 1975, as amended at 40 FR 53237, Nov. 17, 1975; 56 FR 54708, Oct. 22, 1991]

§ 579.3 Violations for which penalty may be imposed.

(a) *What constitutes the violation.* Each of the following constitutes a violation of the Act and/or the Secretary's regulations for which a penalty as provided

by section 16(e) of the Act and this part may be imposed, unless employment of the minor or minors referred to is shown to come within a specific exemption or exception described in paragraph (c) of this section:

(1) Each shipment or delivery for shipment in commerce by a producer, manufacturer, or dealer of any goods produced in an establishment situated in the United States in or about which, within thirty days prior to the removal of such goods therefrom, there has been employed any minor as described in paragraph (b) of this section;

(2) Each employment by an employer of any minor as described in paragraph (b) of this section, for any period in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce;

(3)-(4) [Reserved]

(5) The failure by an employer employing any minor for whom records must be kept under any provision of part 516 or part 545 of this title to maintain and preserve, as required by such provision, such records concerning the date of the minor's birth and concerning the proof of the minor's age as are specified therein; and

(6) The failure by an employer employing any minor subject to any provision of 29 CFR part 570, to take or cause to be taken such action as is necessary to assure compliance with all requirements of such provision which, by the regulations in such part, are made conditions for lawful employment of such minor.

(b) *Minors whose employment may result in violation.* The violations described in paragraph (a) may result from employment of any of the following minors as described:

(1) Any minor under the age of 18 years in any occupation (other than in agriculture) in which employment, as set forth in subpart E of part 570 of this chapter, has been found and declared by the Secretary to be particularly hazardous for or detrimental to the health or well-being of minors below such age;

(2) Any minor under the age of 16 years:

(i) In agriculture during school hours for the school district where such minor is living while so employed; or

(ii) In agriculture in any occupation found and declared by the Secretary as set forth in subpart E-1 of part 570 of this chapter, to be particularly hazardous for the employment of minors below such age; or

(iii) In any manufacturing or mining occupation; or

(iv) In any other occupation other than in agriculture unless it is established that such minor is at least 14 years of age and the employment of such minor in such occupation is specifically permitted by and in accord with regulations of the Secretary as set forth in subpart C of part 570 of this chapter;

(3) Any minor under the age of 14 years:

(i) In any occupation other than in agriculture; or

(ii) In agriculture, outside of school hours for the school district where such minor is living while so employed, unless it is established either:

(A) That such minor is not less than 12 years of age *and* either (1) that such employment is with the written consent of a parent or person standing in place of a parent of such minor, or (2) that such employment is on the same farm where such parent or person is also employed; or

(B) That such minor, if less than 12 years of age, is employed as described in paragraph (b)(4)(i) or (b)(4)(ii) of this section; and

(4) Any minor under the age of 12 years, unless it is established that such minor is employed in agriculture outside of school hours for the school district where such minor is living while so employed, and:

(i) Is employed by a parent or by a person standing in place of a parent of such minor, on a farm owned or operated by such parent or person; or

(ii) Is employed with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act.

(c) *Exemptions and exceptions.* Conduct which otherwise might constitute a violation of the Act as described in paragraphs (a) and (b) of this section may be shown to be not violative of the child labor provisions by evidence that a specific exemption or exception provided in the Act makes such conduct permissible. Thus, the Act provides:

(1) That none of the child labor provisions of section 12 shall apply to: (i) Any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions; (ii) any employee engaged in the delivery of newspapers to the consumer; (iii) any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths); or (iv) any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the States, territories, and possessions listed in section 13(f) of the Act (see Act, sections 13(c)(3), 13(d), 13(f));

(2) That, with respect to the violations described in paragraph (a)(1) of this section, any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of section 12 of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited (see Act, section 12(a) and 29 CFR part 789);

(3) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors as described in paragraph (b)(2)(iv), a parent or person standing in place of a parent may lawfully employ his or her own child or a child in his or her custody under the age of 16 years in an occupation *other than*: (i) Manufacturing or (ii) mining or (iii) an occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or

detrimental to their health or well-being, and an employer may lawfully employ a young worker between 14 and 16 years of age in an occupation permitted and under conditions prescribed by 29 CFR part 570, subpart C;

(4) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(2)(iii), a parent or person standing in place of a parent may lawfully employ on a farm owned or operated by such parent or person, his or her own child or a child in his or her custody under the age of 16 years in an occupation in agriculture found and declared by the Secretary of Labor to be particularly hazardous for the employment of children below such age;

(5) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(3)(ii), employment of minors 12 or 13 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(A) of this section and employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(B) of this section; and

(6) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(4), employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(4)(i) or (ii) of this section.

[40 FR 25792, June 18, 1975, as amended at 41 FR 26836, June 29, 1976]

§ 579.4 [Reserved]

§ 579.5 Assessing the penalty.

(a) The administrative determination of the amount of the civil penalty, of not to exceed \$10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall be based on the available evidence of the violation or violations and shall take into consideration the size of the business of the person charged and the gravity of the

violation as provided in paragraphs (b) through (d) of this section.

(b) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the size of the business of the person charged with the violation or violations, taking into account the number of employees employed by that person (and if the employment is in agriculture, the man-days of hired farm labor used in pertinent calendar quarters), dollar volume of sales or business done, amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.

(c) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the gravity of the violation or violations, taking into account, among other things, any history of prior violations; any evidence of willfulness or failure to take reasonable precautions to avoid violations; the number of minors illegally employed; the age of the minors so employed and records of the required proof of age; the occupations in which the minors were so employed; exposure of such minors to hazards and any resultant injury to such minors; the duration of such illegal employment; and, as appropriate, the hours of the day in which it occurred and whether such employment was during or outside school hours.

(d) Based on all the evidence available, including the investigation history of the person so charged and the degree of willfulness involved in the violation, it shall further be determined, where appropriate,

(1) Whether the evidence shows that the violation is “de minimis” and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act; or

(2) Whether the evidence shows that the person so charged had no previous history of child labor violations, that the violations themselves involved no intentional or heedless exposure of any minor to any obvious hazard or detriment to health or well-being and were inadvertent, and that the person

so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act.

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 relating to child labor or any regulation issued under that section shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to § 579.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

(f) A determination of the penalty made in an administrative proceeding after opportunity for hearing as provided in section 16(e) of the Act and pursuant to Part 580 of this chapter shall be final.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991]

§§ 579.6—579.8 [Reserved]

§ 579.9 Effective date.

The assessment of civil penalties, not to exceed \$10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall apply to all such violations occurring on or after November 5, 1990. A civil penalty not to exceed \$1,000 per violation shall be applicable to any such violation occurring before November 5, 1990.

[56 FR 8679, Feb. 28, 1991]

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

Sec.

580.1 Definitions.

580.2 Applicability of procedures and rules.

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580.4 Contents of notice.

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